

REMARKS

This is responsive to the Office Action mailed on June 29, 2007. In the Office Action, claims 1-5 and 16 were rejected. Applicant has amended claim 16. The application currently includes claims 1-5 and 16.

The Office Action objected to claim 16 as requiring a comma or a semicolon at the end of lines 12, 14 and 17 and that the word "edge" in line 21 should be changed to "section." Applicant has amended claim 16 to include commas at the end of lines 12, 14 and 17 and also has amended the claim language to replace the word "edge" with "section" in line 21. With these amendments, Applicant respectfully requests that the objection to claim 16 be withdrawn.

The Office Action rejected claims 1, 2, 4 and 5 under 35 USC § 112, first paragraph, as failing to comply with the written description requirement. The Office Action states that claim 1 requires that each cutting line be concave with respect to a straight line between a first and second ends of the respective cutting line being about 14% of the length of the straight line. The Office Action alleged that this structural limitation, specifically the ratio of about 14%, was not included in the original set of claims, instead it was added in the amendment filed February 6, 2006. The Office Action alleges that the ratio was not included in the originally filed Specification and was instead added in the amendment of February 6, 2006 and therefore, the ratio constitutes new matter.

The Office Action refers to the *Hockerson-Halberstadt, Inc. v. Avia Group Int'l*. 222 F.3d 951, 956, 55 USPQ2d 1487, 1491 (Fed. Cir. 2000). The Office Action alleges that *Hockerson* concluded that it is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue.

Applicant respectfully submits that the ratio of about 14% is not new matter. An applicant shows possession of the claimed invention by describing the claimed invention with all of its limitations using such descriptive means as words, structures, figures, diagrams and formulas that fully set forth the claimed invention. *Lockwood v. American Airlines, Inc.*, 107 F.3d 1565, 1572, 41 USPQ2d 1961, 1966 (Fed. Cir. 1997). Compliance with the written

description requirement is a question of fact which must be resolved on a case-by-case basis. *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1563, 19 USPQ2d 1111, 1116 (Fed. Cir. 1991). Applicant submitted drawings in the application. The drawings prove that Applicant had possession of the subject matter shown in the drawings as of the filing date. The drawings show the “about 14%” relationship that was disclosed in the application filed. Therefore, the inclusion of term “about 14%” was disclosed in the original specification. As such, the “about 14%” is not new matter.

Regarding *Hockerson*, the case stands for the proposition of what is prior art and what is disclaimed matter. The *Hockerson* case did not mention whether or not an amendment made to a claim was new matter or not. Rather, *Hockerson* related to the scope of a drawing in the prior art and the statements made to overcome the rejection based upon the prior art.

Applicant respectfully submits that the Office Action is confusing the issue of what is new matter with the issue of what a drawing discloses as prior art. For instance, the heading of MPEP §2125, upon which the Office Action is relying, is “Drawings as Prior Art.” There is a difference between the disclosure of a prior art reference and what is new matter.

Applicant respectfully submits that the Office Action erred in alleging that the inclusion of “about 14%” is new matter. Therefore, Applicant respectfully requests that the new matter rejection be withdrawn.

The Office Action rejected claim 16 under 35 USC § 103(a) as being unpatentable over the Poget French patent 2595190 in view of the Isbell 4,380,889 patent. The Office Action alleges that the Poget patent discloses a knife section comprising a flat top and bottom surface, a base end, a leading end opposite the base edge, a left side including an edge extending from the base edge to about one half of a distance between the base edge and leading end, and an arcuate left cutting edge extending between the left side edge and the leading end. The Office Action also alleges that the Poget patent discloses a right side including an edge extending from the base edge to about one half of a distance between the base edge and leading end and an arcuate right cutting edge extending between the left side edge and the leading end. The Office Action alleges that the Poget patent discloses a distance between the left cutting edge and the right cutting edge

continually increases from the leading end to the left and right side edges, wherein the arcuate cutting edges define portions of a substantially elliptical cutting edge when a left side edge of one knife section is positioned substantially adjacent to a right side edge of another knife edge.

Applicant respectfully disagrees that when the sickle sections disclosed in the Poget patent are aligned one next to each other that the cutting edges define a substantially elliptical cutting edge. Applicant has photocopied the drawings of sickle sections disclosed in the Poget patent and positioned three sickle section figures adjacent to each other, which is attached hereto as Exhibit A. The sickle sections disclosed in the Poget patent define a substantially V-shape cutting edge.

In contrast, Applicant has also photocopied the sickle sections illustrated in Figure 4 of the application and positioned three sickle section figures side by side which is attached hereto as Exhibit B. The cutting edge of the three side by side sickle sections provide substantially elliptical cutting as claimed. The V-shaped cutting edge is not a substantially elliptical cutting edge as claimed.

Further, there is no suggestion in the Poget patent of increasing the arc of the cutting edge to make the cutting edge substantially elliptical when two sickle sections are positioned adjacent each other. Therefore, the Poget patent in view of the Isbell patent does not make independent claim 1 obvious. Reconsideration and allowance of claim 16 are respectfully requested.

For the foregoing reasons, Applicant respectfully submits that the present application is in allowable form. Reconsideration and allowance of claims 1, 2, 4, 5 and 16 are respectfully requested.

The Director is authorized to charge any fee deficiency required by this paper or credit any overpayment to Deposit Account No. 23-1123.

Respectfully submitted,

WESTMAN, CHAMPLIN & KELLY, P.A.

By: /Peter J. Ims/
Peter J. Ims, Reg. No. 48,774
900 Second Avenue South, Suite 1400
Minneapolis, Minnesota 55402-3319
Phone: (612) 334-3222 Fax: (612) 334-3312

PJI/mek